



**Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals**

John Lee, Chairman
Susanne Murphy, Vice Chair
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Rick Merrikin, Member
Drew Delaney, Associate Member

FILE

DECISION – WALPOLE ZONING BOARD OF APPEALS CASE NO. 07-19

APPLICANT
Christopher Brundrett

LOCATION OF PROPERTY INVOLVED
13 McKinley Avenue
Walpole Assessors Map: 13; Lot 39, Zoning District Res B.

APPLICATION

A **Special Permit** pursuant to Section 9.4.A of the Zoning By-Laws to allow a change, extension, or alteration of an existing nonconforming one-family dwelling, including the construction of a covered porch.

A **Finding** under Section 6 of the Zoning By-Laws that the covered porch that will be less than thirty (30) feet from the street is of no substantial detriment to the neighborhood.

On May 29, 2019 a Public Hearing was held in the Richard Stillman Community Room of the Walpole Police Station, and continued to June 19, 2019 for the purpose of receiving information and voting upon a decision as to the granting of the Special Permit and Finding requested.

The following members were present and voting:

John Lee, Chairman
Susanne Murphy, Vice Chairman
Bob Fitzgerald, Clerk
Mary Jane Coffey, Member
Rick Merrikin, Member

A motion was made by Coffey, seconded by Murphy, to grant a **Special Permit** under Section 9.4.A of the Zoning By-Laws to allow a change, extension, or alteration of an existing nonconforming one-family dwelling, including the construction of a covered porch, at 13 McKinley Avenue, Walpole MA 02081.

The vote was **(5-0-0) in favor** (Lee, Fitzgerald, Murphy, Coffey, Merrikin voting); therefore the application for a **Special Permit** is hereby **granted, subject to the following conditions**:

CONDITIONS:

135 School Street, Walpole, MA 02081

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1. The proposed single family dwelling and porch shall be constructed according to the plans submitted at the public hearing on May 29, 2019, dated March 1, 2019, titled “ #13 McKinley Avenue Zoning Board of Appeals Plan of Land In Walpole, MA” signed and stamped by Andrew C. Murphy of Glossa Engineering, Inc., 46 East Street, East Walpole, MA 02032.
2. Construction shall commence within one year of issuance of the Decision.

REASONS FOR DECISION

As part of this finding, the Board hereby makes specific findings pursuant to Section 9.4.A of the Zoning Bylaw and M.G.L. Chapter 40A, Section 6, Paragraph 1 that:

The Board finds that the proposed farmer's porch on the front of the proposed single-family dwelling meets the requirements of Section 9.4.A. of the Zoning Bylaw. Although the proposed construction of the farmer's porch will increase the nonconforming nature of the structure, such enlargement or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The nature of the proposed single-family use will remain unchanged, with a significant front yard remaining. Based on these factors, as well as the many letters from neighborhood residents in support of the project, the Board finds that the proposed deck will not be substantially more detrimental to the neighborhood than the previously existing structure and use. The proposed construction of a farmer's porch for the single-family residential dwelling is reasonable and appropriate within this residential area.

Furthermore, the applicant's voluntary demolition of the structure is hereby approved by the Board under Section 9.2.G.4 of the Zoning Bylaw and does not constitute evidence of abandonment of the existing nonconforming structure, provided construction of the new single-family dwelling commences within one year of this Decision.

FURTHER FINDINGS

It is the finding of the Board that the applicant was able to meet the requirements of Section 2.2.B of the Zoning Bylaws, which requires that:

- (1) Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:*
 - (a) Does and shall comply with such criteria or standards as shall be set forth in in the section of this Bylaw which refers to the granting of the requested special permit;*

As detailed herein, the proposed project complies with the provisions of Section 9.4.A. of the Zoning Bylaw, thus this criterion is met.

- (b) Shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;***

The Board finds that the proposed single family dwelling with the farmer's porch will not significantly increase vehicular or pedestrian traffic, as the number of occupants in the house will remain unchanged, this requirement is therefore met.

- (c) Shall not have a number of residents, employees, customers, or visitors so as to adversely affect the immediate neighborhood;***

The Board finds that the proposed project will not result in an increase in the number of residents or visitors that would adversely affect the immediate neighborhood (employees and customers do not apply to this residential site) and this requirement is therefore met.

- (d) Shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;***

There are no buffer zone requirements associated with this use.

- (e) Shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;***

The Board finds that single family residential uses are not known to be dangerous due to fire, explosion, emission of wastes, or other causes. As such, the Board finds that this criterion is met.

- (f) Shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;***

The Board finds the single-family dwelling with farmer's porch will not create more substantial noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance so as to adversely affect the immediate neighborhood. As such, the Board finds that this criterion is met.

- (g) Shall not adversely effect the character of the immediate neighborhood; and***

The Board finds that the property lies within an existing single-family residential neighborhood and that the proposed reconstruction of the single-family dwelling with farmer's porch is reasonable for the neighborhood. It is noted that there was no opposition and numerous letters of support from members of the neighborhood were submitted at the public hearing. Lastly, the design of the proposed farmer's porch will

be closer to the street, however it had been determined that it will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The Board therefore finds that this criterion is met.

(h) Shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.

The Board finds that the proposed single-family dwelling with farmer's porch is appropriate for the RB Zoning District, where single-family residential uses are allowed by right. As such, the Board finds that this criterion is met

* * * * *

Consistency: This decision is consistent with purpose and intent of the Zoning Bylaw.

The grant of relief under this decision is limited to the relief expressly granted hereunder; and any other relief sought is hereby denied.

* * * * *

Said Special Permit is granted pursuant to Massachusetts General Laws c. 40A, s.9 which provides in pertinent part as follows:

"...special permits granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause."


Massachusetts General Laws c. 40A, s. 11. provides in pertinent part as follows:

"A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's

certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant."

MASSACHUSETTS GENERAL LAWS c. 40A, s. 15 PROVIDES THAT APPEALS FROM A DECISION OF A BOARD OF APPEALS SHALL BE MADE PURSUANT TO SECTION 17 OF c 40A AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS


Robert Fitzgerald, Clerk

cc: Town Clerk
Building Inspector
Applicant

This decision was made on June 19, 2019 and filed with the Town Clerk on July 2, 2019.

RF/am